

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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COM

FILE: B-197292

DATE: January 15, 1980

MATTER OF: Permanent Appropriation of Mobile *addressee*
Home Inspection Fees

DIGEST: Section 620 of National Mobile Home Construction and Safety Standards Act of 1974, as amended by Housing and Community Development Act of 1979, constitutes permanent indefinite appropriation of mobile home inspection fees collected by Secretary of Housing and Urban Development. Funds will be available to pay costs of inspection program without any further action by Congress. B-114808, August 7, 1979, distinguished.

The Assistant Director, Accounting Operations, Bureau of Government Financial Operations, Department of the Treasury, has requested our decision on whether language in the Housing and Community Development Act of 1979, Pub. L. No. 96-153, 93 Stat. _____, constitutes a permanent indefinite appropriation of fees collected by the Secretary of Housing and Urban Development (HUD) under a mobile home inspection program. The legislation authorizes the Secretary of HUD to use the inspection fees to pay the expenses incurred in carrying out the inspections. Specifically, the Treasury letter asks whether this language can be interpreted as providing a permanent indefinite appropriation in light of our recent decision, B-114808, August 7, 1979, in which we stated that a statute cannot be interpreted as a permanent appropriation unless the intent of the Congress to make an appropriation is clear in the language of the legislation.

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For the reasons indicated below, it is our opinion that the language in question does constitute a permanent indefinite appropriation of the fees, to be used for offsetting the costs of the mobile home inspection program.

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The program of inspection of mobile homes is mandated by the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq. (1976). The authority for the Secretary of Housing and Urban Development to charge fees for these inspections is contained in section 620 of the act, 42 U.S.C. § 5419, which provides:

"In carrying out the inspections required under this chapter, the Secretary may establish and impose on mobile home manufacturers, distributors, and dealers such reasonable fees as may be necessary to offset the expenses incurred by him in conducting such inspections.* * *"

The 1979 amendment adds the following language to this authorization:

"and the Secretary may use any fees so collected to pay expenses incurred in connection with such inspections."

Section 620 of the act, as amended, therefore authorizes the Secretary to impose fees for inspections and to use these fees to pay the expenses of the inspections. The question posed by the Treasury inquiry is whether section 620 as amended constitutes a permanent indefinite appropriation.

GAO → *Seld*
This Office has consistently viewed statutes which authorize the collection of fees and their deposit into a particular fund, and which make the fund available for expenditure for a specified purpose, as constituting continuing or permanent appropriations without further action by the Congress. See, e.g., 57 Comp. Gen. 311, 313 (1978); 50 Comp. Gen. 323, 324 (1970); 35 Comp. Gen. 615, 618 (1956).

legislation
In the present case, amended section 620 authorizes the Secretary to collect fees and to use them for a specific purpose. Although the statute does not expressly authorize the establishment of a special fund or the deposit of the receipts into such a fund, we interpret it as authorizing such a fund as a necessary implementation procedure.

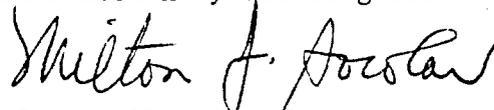
GAO
We conclude that the statute, which authorizes the collection of fees, their deposit in a special fund, and their availability for a specific purpose, constitutes a permanent indefinite appropriation of these fees. // *D-3*

Our decision in B-114808, August 7, 1979, referred to in the Treasury letter, is distinguishable from the current case. In that decision we were interpreting a statute which directed the Secretary of the Treasury, at the beginning of a fiscal year, to remit to the

government of Guam an amount equal to the duties, taxes, and fees estimated to be collected in Guam during the coming year. The statute did not specify the source of the funds for these prepayments, but it was clear that at least the payment for the first year would have to come from the general fund of the United States Treasury. Under these circumstances, we looked at Article I, section 9, clause 7 of the United States Constitution, which requires "appropriations made by law" before money can be drawn from the Treasury, and 31 U.S.C. § 627, which states that an act of Congress shall not be interpreted as making an appropriation out of the United States Treasury "unless such Act shall in specific terms declare an appropriation to be made." Applying these standards to the statutory language in question, we determined that although the statute constituted a permanent authorization, it did not establish a permanent indefinite appropriation.

In the present case, we are not concerned with the payment of monies out of the general fund of the Treasury. Rather, the statute authorizes the Secretary of HUD to assess fees, to retain those fees, and to expend those fees for a specific purpose. In this instance, where it is clear from the statute that the Congress intended to make these fees available for expenditure, and where the legislative history indicates that the very purpose of the 1979 amendment was to make it clear that these funds were to be available without further action of the Congress (see 125 Cong. Rec. S9383 (daily ed., July 13, 1979)), our rationale in B-114808 does not apply.

We therefore conclude that section 620 of the National Mobile Home Construction and Safety Standards Act of 1974, as amended by the language in Public Law 96-153, constitutes a permanent indefinite appropriation of the mobile home inspection fees collected by the Secretary of HUD, and that these funds are available to pay the costs of the inspections without any further action by the Congress.



For the Comptroller General
of the United States